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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2512/2014*, **

Communication submitted by:	Raziyeh Rezaifar (represented by the Danish Refugee Council)
Alleged victims:	The author and two of her children, M.M. and D.M.
State party:	Denmark
Date of communication:	14 December 2014 (initial submission)
Document references:	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 19 December 2014 (not issued in document form)
Date of adoption of Views:	10 March 2017
Subject matter:	Deportation to Italy
Procedural issues:	Substantiation of claims
Substantive issues:	Torture; cruel, inhuman or degrading treatment or punishment
Articles of the Covenant:	7
Articles of the Optional Protocol:	2

1.1 The author of the communication is Raziyeh Rezaifar, an Iranian national born in 1972, of Persian ethnicity, who converted to Christianity, and two of her children: her daughter, M.M., born on 16 September 1996, and her son, D.M., born on 12 November 2011 (the children were respectively 18 and 3 years old at the time of the submission of her communication).

1.2 The author's asylum application was rejected and she was facing imminent deportation to Italy at the time of the submission of her communication to the Committee.

* Adopted by the Committee at its 119th session (6-29 March 2017).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval. In accordance with article 90 of the Committee's rules of procedure, Mauro Politi did not participate in the consideration of the communication.

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She claims that her deportation to Italy will put her and her children at risk of inhuman and degrading treatment, in violation of article 7 of the International Covenant on Civil and Political Rights. The author is represented by the Danish Refugee Council.[1]

1.3 On 19 December 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author and her two children to Italy while their case was under consideration by the Committee.

1.4 On 23 December 2014, following the Committee's request, the Refugee Appeals Board (*Flygtningenævnet*) suspended the time limit for the departure of the author and her two children from Denmark, until further notice.

1.5 On 8 September 2015 and 2 May 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

The facts as submitted by the author

2.1 The author originates from Teheran, Islamic Republic of Iran. She is of Persian ethnicity and has converted from Islam to Christianity. She has three children. Her oldest son, aged 22 at the time of the submission of the communication (born in 1992), is currently in Italy, while her two other children are accompanying her in Denmark: M.M., 18 years old,[2] born in Teheran, and M.D., 3 years old, born in Italy.

2.2 The author fled the Islamic Republic of Iran through Greece in 2008 with her former husband and their children, due to her former husband's political activities for the Kurdish Komeleh party. The family arrived in Forlì, Italy, in 2008, and was subsequently sent to Foggia, in southern Italy. The family was granted international protection in Italy in 2008.

2.3 During her stay in Italy, the author became involved in the Christian community, and in Denmark she converted to Christianity and was baptized.

2.4 The family stayed for the first three months in Italy in an asylum centre. After three months, a dwelling was provided for them. After the family was granted refugee status, they had difficulties paying the rent, as they could not find steady employment. The author's daughter, M.M., attended a Catholic school.

2.5 During the family's stay in Italy, the author's former husband became addicted to narcotics. The author and her children were subjected to domestic violence, they were impoverished and the author was forced by her former husband to prostitute herself. After the birth of her youngest son, the author decided to leave her former husband and take her children with her.

2.6 The author suffers from bipolar disorder and depression. After the family's stay in reception facilities, she had serious difficulties in financing her medical treatment. In 2009, she was diagnosed with cervical cancer, but could not afford to undergo surgery in Italy. The operation was finally financed by some of her friends, but the author could not afford the post-surgery treatment.

2.7 The author's youngest son, D.M., was born in Italy in November 2011. He suffers from a heart disease, atrial septal defect, which has required regularly medical examination and control.

2.8 The author's residence permit in Italy expired on 19 October 2012 and was not renewed due to her departure for Denmark.

2.9 The author arrived in Denmark on 16 July 2012, and applied for asylum. In October 2012, the Italian authorities accepted the request by Denmark to accept the family back in Italy, in accordance with the Dublin II Regulation. However, due to the living conditions for asylum seekers in Italy, the Danish Ministry of Justice reviewed the decision, and determined on 13 May 2013 that the author and her two children should have their

[1] And subsequently by Hannah Krog of ng6Advokater.

[2] At the time that the communication was submitted to the Committee.

application for asylum processed in Denmark for humanitarian reasons, in particular because of the age of the author's youngest child.

2.10 On 12 March 2014, the Danish Immigration Service (*Udlændingestyrelsen*) rejected the author's asylum application. Although it recognized that the author was to be regarded as a person in need of protection under section 7.1 of the country's Aliens Act, it deemed that Italy should serve as the author's first country of asylum, as provided in section 7.3 of the Aliens Act, of Denmark.

2.11 On 14 August 2014, the Refugees Appeals Board rejected the author's application. The Board determined that Italy constituted the author's first country of asylum, in the following manner: "The majority notices that there is newer disturbing background information regarding the current conditions in Italy but — after a complete assessment — does not find that it can be established that Italy cannot and will not make sure that the applicant achieves adequate economic and social conditions including the necessary medical help."

2.12 The author was interviewed by the police on 15 December 2014 with respect to her deportation. She therefore expected her deportation to Italy to be imminent when she submitted her communication to the Committee.

The complaint

3. The author submits that by forcibly returning her and her two children to Italy, the State party would violate their rights under article 7 of the Covenant.[3] She states that her family unit is particularly vulnerable, and runs a real risk of facing inhuman and degrading treatment upon return to Italy. On the basis of her prior experience in Italy, and the general information available, the author claims that she and her children face a real risk of facing homelessness and destitution, with limited access to the necessary medical care.

State party's observations on admissibility and the merits

4.1 On 17 October 2014, the State party submitted that the communication was inadmissible, or, alternatively, without merit. The State party first describes the structure, composition and functioning of the Refugee Appeals Board, as well as the legislation applying to cases related to the Dublin II Regulation.[4]

4.2 As to the admissibility and merits of the communication, the State party argues that the author has failed to establish a prima facie case for the purpose of admissibility of her communication under article 7 of the Covenant. In particular, it has not been established that there are substantial grounds for believing that she will be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment in Italy. The communication is therefore manifestly unfounded and should be declared inadmissible. In the alternative, the State party submits that that the author has not sufficiently established that article 7 will be violated in case of her and her two children's return to Italy. It follows from the Committee's jurisprudence that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The Committee has also indicated that the risk must be personal, and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[5]

[3] The author cites the European Court of Human Rights cases of *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgment of 21 January 2011, and *Samsam Mohammad Hussein and others v. the Netherlands and Italy*, application No. 27725/10, decision of 2 April 2013.

[4] See communications No. 2379/2014, *Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1-4.3, or No. 2608/2015, *R.A.A. and Z.M. v. Denmark*, Views adopted on 28 October 2016, para. 4.1.

[5] The State party refers to communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

4.3 The State party recalls that the author and her two children entered Denmark on 16 July 2012 without valid travel documents. Later the same day, the author applied for asylum. On 12 March 2014, the Danish Immigration Service refused the author asylum. On 14 August 2014, the Refugee Appeals Board upheld that decision. On 14 December 2014, the author brought the case before the Committee, claiming that it would constitute a breach of article 7 of the Covenant to deport her and her two children to Italy.[6]

4.4 The State party referred to the Refugee Appeals Board decision of 14 August 2014, which itself recalled the Danish Immigration Service's finding that, viewed in isolation, the author and her two accompanying children, born in 1996 and 2011, fell within section 7 (1) of the Aliens Act because she had converted to Christianity. The Refugee Appeals Board thus limited its analysis to the issue of whether Italy could serve as the author's country of first asylum.

4.5 The State party observes that in her communication, the author did not provide any essential new information regarding her circumstances beyond the information already relied upon in connection with her asylum proceedings and that the Refugee Appeals Board has already considered these circumstances. The Refugee Appeals Board found that the author fell within section 7 (2) of the Aliens Act (protection status), however she had been granted asylum in Italy in 2008 and her residence permit could be renewed. Moreover, the majority of the Refugee Appeals Board found as a fact that the author was able to enter Italy and stay there lawfully. It therefore refused to grant asylum to the author with reference to section 7 (3) of the Aliens Act (the country of first asylum principle). The State party adds that, when considering whether a country may serve as a country of first asylum, the Refugee Appeals Board requires as a mandatory minimum that the asylum seeker be protected against refoulement. It must also be possible for the asylum seeker to enter legally and to get lawful residence in the country of first asylum that is involved, and the asylum seeker's personal integrity and safety must be protected there. This concept of protection also includes a certain social and economic element, but does not extend beyond the provision of basic living conditions.[7] However, it cannot be required that the asylum seekers concerned will have completely the same social living standards as the country's own nationals. The core of the protection concept is that the persons must enjoy personal safety both when they enter and when they stay in the country of first asylum.

4.6 As to the author's allegations to the effect that, if returned to Italy, she and her two children would risk having to live in the streets without access to accommodation and to medical care, the State party refers to the European Court of Human Rights admissibility decision of 2 April 2013 in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, in which the court noted that a person granted subsidiary protection would be provided with a residence permit with a validity of three years which could be renewed by the territorial commission that had granted it; that this permit could further be converted into a residence permit for the purposes of work in Italy, provided that this was requested before the expiry of the validity of the residence permit and provided that the person concerned held an identity document; and that a residence permit granted for subsidiary protection entitled the person concerned, inter alia, to a travel document for aliens, to work and to family reunion, and to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.

4.7 The author was granted subsidiary protection in Italy until 19 October 2012. The State party submits that there is no basis for assuming that her permit will not be renewed. The State party also notes that the author has mainly referred to reports and other background material concerning reception conditions in Italy that are relevant only to asylum seekers, including Dublin II Regulation returnees to Italy, and not to persons, such as the author, who have already been granted subsidiary protection in Italy. The State party

[6] At the time of the decisions of the Danish Immigration Service and the Refugee Appeals Board, the author's child M.M. was still a minor (born on 16 September 1996). She was 18 when the communication was submitted to the Committee in December 2014.

[7] The State party notes that the assessment includes, inter alia, Parts II to V of the Geneva Convention, and Executive Committee conclusion No. 58 (1989).

refers to a report entitled "Asylum procedure and reception conditions in Italy",[8] which indicates that Dublin returnees will in general be reinserted in their previous asylum procedure at the stage they were at when they left. It appears that the majority of Dublin returnees had already received an Italian residence permit before they left Italy for other European countries. It is possible to renew a residence permit issued to an accepted refugee or granted for subsidiary protection or compelling humanitarian reasons by filing a request with the competent police immigration department.

4.8 The State party notes that the European Court of Human Rights also stated[9] that the assessment of whether there were substantial grounds for believing that the applicant faced a real risk of being subjected to treatment in breach of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) must necessarily be a rigorous one and inevitably required that the court assess the conditions in the receiving country against the standard of that article. The court concluded[10] that the mere fact of return to a country where one's economic position would be worse than in the expelling State was not sufficient to meet the threshold of ill-treatment proscribed in article 3, and that article 3 could not be interpreted as obliging States parties to provide everyone within their jurisdiction with a home; that provision did not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living. The court noted that aliens who were subject to expulsion could not in principle claim any entitlement to remain in the territory of a State and continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. Accordingly, the court concluded that in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed was not sufficient.

4.9 Concerning living conditions in Italy, taking into account reports of governmental and non-governmental organizations, the court considered that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S. v. Belgium and Greece*."[11]

4.10 Regarding the author and her minor son's health, the State party submits that it must be assumed, in view of the background information available, that the family will have access to health-care services in Italy. In addition, the author stated at the Refugee Appeals Board hearing on 14 August 2014 that she had received treatment and medication for her mental health problems in Italy, and that she had seen a psychiatrist. On 15 January 2015, the Refugee Appeals Board requested the author to submit additional medical records in support of her application. In response, on 14 June 2015, the author submitted once again the medical records appended to her initial complaint. It also appears from her counsel's brief of 2 July 2014 to the Refugee Appeals Board that the author had stated to counsel that "she had been told that her son's two heart valves did not close as they were supposed to, but after having been examined in Denmark, it appear[ed] that they work as they should now".

4.11 In the opinion of the State party, the *Tarakhel* judgment[12] — which concerns a family with the status of asylum seekers in Italy — does not deviate from the findings in previous case law on individuals and families with a residence permit for Italy, as expressed in, inter alia, *Mohammed Hussein and others v. the Netherlands and Italy*. Accordingly, the State party finds that it cannot be inferred from the *Tarakhel* judgment that member States

[8] Published by Juss-Buss, a Norwegian-Swiss NGO, in May 2011, following a visit to Italy in September 2010, with a specific focus on Dublin returnees.

[9] *Samsam Mohammad Hussein and others v. the Netherlands and Italy*, para. 68.

[10] Ibid., paras. 70 and 71.

[11] Ibid., para. 78.

[12] European Court of Human Rights, *Tarakhel v. Switzerland*, application No. 29217/12, judgment of 10 September 2014.

are required to obtain individual guarantees from the Italian authorities before deporting to Italy individuals or families in need of protection who have already been granted residence in Italy.

4.12 The State party reiterates in this respect that it appears from the decision in *Samsam Mohammed Hussein and others v. the Netherlands and Italy* that persons recognized as refugees or granted subsidiary protection in Italy are entitled to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law. Accordingly, article 7 of the Covenant does not prevent the State party from enforcing the Dublin II Regulation in respect of the author and her two children.

Author's comments on the State party's observations

5.1 On 21 August 2015, the author submitted her comments on the State party's observations. She asserts that the living conditions in Italy both for asylum seekers and for beneficiaries of subsidiary protection, such as her, are similar, since there is no effective integration scheme in place. Asylum seekers and recipients of subsidiary protection thus often face the same severe difficulties in finding basic shelter, food, and access to sanitary facilities.[13] The author refers to the 2013 Jesuit Refugee Service report, in which it is stated that the real problem concerns those who are sent back to Italy and had already been granted some kind of protection; they may have already stayed in at least one of the accommodation options available upon initial arrival but, if they left the centre voluntarily before the established time, they are no longer entitled to accommodation in the government reception centres for asylum seekers.[14]

5.2 The author does not dispute the fact that she may travel to Italy and live there legally with her children. The issue is not whether there is a risk of refoulement. The information available indicates that a significant number of refugees are left without accommodation in Italy, as the hosting capacity is insufficient. The relevant issue is thus that the author will not benefit from proper housing and adequate medical treatment, and that she and her children will be exposed to substandard living conditions, lack of social assistance from the authorities and no prospect of finding a durable humanitarian solution.

5.3 The author also disputes the interpretation of the jurisprudence of the European Court of Human Rights referred to by the State party. The author contends that in the *Samsam* case notably,[15] the information provided by the court on the conditions of reception for asylum seekers and refugees does not correspond to the findings of the Office of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations (NGOs). Also, in contrast to the *Samsam* case, the author in the present case has already experienced living as a refugee in Italy, where she failed to receive any assistance, was not able to pay her rent, and could not secure the basic needs of her family, including the medical assistance that she and her son needed. The author recalls that she had had to prostitute herself to support her family. Therefore, there is no basis for assuming that the Italian authorities will be able to receive her and her children in accordance with basic humane standards. Living lawfully in the country, the author has already experienced the living conditions there, which she found to be desperate.

5.4 The author also notes that the judgment in the *Tarakhel* case concerned an asylum-seeking family, and thus does not correspond to her situation. Nevertheless, the case is relevant to the extent that the living conditions and the difficulties in finding shelter, health care and food are similar for asylum seekers and persons who have already been granted protection. The European Court of Human Rights noted that, in the current situation in Italy, "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in

[13] The author refers, inter alia, to the October 2013 report of the Swiss Refugee Council entitled "Reception conditions in Italy: report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees".

[14] Jesuit Refugee Service, "Protection interrupted: the Dublin Regulation's impact on asylum seekers' protection", June 2013, p. 152.

[15] See *Samsam Mohammad Hussein and others v. the Netherlands and Italy*, particularly paras. 38 and 39.

insalubrious or violent conditions, cannot be dismissed as unfounded".[16] The court also emphasized that children, especially, have "specific needs" and "extreme vulnerability" and that reception facilities for children "must be adapted to their age, to ensure that those conditions do not 'create ... for them a situation of stress and anxiety', with particular traumatic consequences".[17] The court required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions appropriate to the age of the children; if such assurances were not made, Switzerland would be violating article 3 of the European Convention on Human Rights by transferring them to Italy.[18] The author argues that in light of this finding, the harsh conditions faced by recipients of subsidiary protection returning to Italy would fall within the scope of article 3 of the European Convention on Human Rights, which corresponds to article 7 of the Covenant.[19]

5.5 The author submits that the *Tarakhel* decision seems to indicate that the premise laid out in the *Samsam* decision can no longer be regarded as sufficient, and that individual guarantees, especially to protect returning children from harsh living conditions, are required according to the European Convention on Human Rights. In this connection, the author notes that the issue in the *Tarakhel* case was not the risk of refoulement, but the living conditions in the overcrowded reception facilities for asylum seekers. Thus, the *Tarakhel* decision indicates that the fact that a person is protected from refoulement in Italy does not exclude violations of article 3 of the European Convention on Human Rights due to harsh living conditions, especially for families with children. Accordingly, the fact that the author in the present case was recognized as a refugee does not exclude the risk of her and her children being faced with harsh living conditions, homelessness and destitution with no realistic prospect of improvement, constituting a breach of article 7 of the Covenant.

5.6 The author recalls that she belongs to a particularly vulnerable population group and is in need of special protection: she is a single mother, she suffers from bipolar disorder and depression and is dependent on medical and psychiatric treatment, and her youngest son suffers from a heart disease that requires medical attention. Regardless of the formal Italian legislative scheme applicable to the renewal of residence permits and the formal access to integration schemes, relevant background information strongly indicates that the actual living conditions in Italy for beneficiaries of international protection do not meet basic humanitarian standards as required in UNHCR Executive Committee conclusion No. 58. In these circumstances, there is a substantial risk that the author and her children will be exposed to degrading treatment if deported to Italy.

Additional submissions by the parties

6.1 On 16 November 2015, the author referred to the Committee's Views in the case of *Jasin and others v. Denmark*,[20] stressing that, similarly to the present case, the Refugee Appeals Board did not give sufficient weight to the personal risk faced by the author if removed to Italy. The author reiterates that it is not sufficient for the State party to rely on general background information indicating that, in theory, returnees have the right to work, housing and social assistance. According to the author, an individual assessment must be undertaken by the State party, which would assess all available evidence, including the fact that she failed to receive any assistance in the past in Italy.

6.2 The author also submits that her inability to exercise her most basic economic and social rights in Italy may leave her with no choice but to return to the Islamic Republic of Iran, effectively rendering her right to non-refoulement illusory under international refugee law.

7.1 In reply to the author's comments, on 23 February 2016, the State party noted that in its consultation response to the Danish authorities in the summer of 2015, the Italian authorities had informed the State party that an alien granted residence in Italy with refugee

[16] See *Tarakhel v. Switzerland*, para. 115.
[17] Ibid., para. 119.
[18] Ibid., paras. 120 and 122.
[19] Ibid., para. 119.
[20] See communication No. 2360/2014, Views adopted on 22 July 2015, paras. 8.8-10.

or protection status may apply for renewal of his or her residence permit on his or her return to Italy, even if the residence permit has expired. The Italian authorities also informed the Danish authorities that, on his or her return to Italy, such alien must contact the police station that issued the residence permit, which will subsequently forward the request to the proper authority and will ask for verification of whether the conditions for renewal are met. The Italian authorities stated that an alien whose residence permit has expired may lawfully enter Italy for the purpose of having his or her residence permit renewed. Against this background, the State party finds that it can be considered a fact that the author and her children, whose residence permits for protection status in Italy have expired, are entitled to enter Italy and apply for renewal of their residence permits for Italy.

7.2 As regards the author's reference to the case of *Jasin and others v. Denmark*, the State party observes that the background material available to the Refugee Appeals Board is collected from a wide range of sources, and is compared with the asylum seeker's statement, including his or her past experiences. The author had the opportunity to make both written and oral statements during the asylum proceedings before the Danish Immigration Service and the Refugee Appeals Board, and was represented by counsel. The Refugee Appeals Board made a thorough assessment of her asylum case. Accordingly, the State party maintains that the author failed to establish a prima facie case for the purpose of admissibility of their communication under article 7 of the Covenant and that the communication is therefore manifestly unfounded and should be considered inadmissible. In the alternative, the State party maintains that article 7 of the Covenant will not be violated if the author and children are returned to Italy.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the author's claim under article 7 of the Covenant is unsubstantiated. However, the Committee considers that the author has sufficiently substantiated her claims for the purposes of admissibility, and notes that the State party did not challenge the credibility of the claims, nor did it contest the assertion that the author could face real difficulties upon her return to Italy. Accordingly, the Committee declares the communication admissible insofar as it raises issues under article 7 of the Covenant, and proceeds to its consideration on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that deporting her and her two children, including her minor son, D.M., to Italy, based on the Dublin II Regulation principle of "first country of asylum", would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The author bases her arguments on, inter alia, the actual treatment that she had received after she was granted subsidiary protection in Italy, the particular vulnerability of her family unit, and the general conditions of reception for asylum seekers and refugees entering Italy, as found in various reports. The Committee also notes the

author's argument that, being incapable of exercising her basic economic and social rights, she may de facto be compelled to return to the Islamic Republic of Iran.

9.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant,[21] in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[22] The Committee also recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,[23] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[24]

9.4 The Committee notes that the author was granted subsidiary protection in Italy in 2008, with a residence permit that expired on 19 October 2012, and that she travelled to Denmark with her two then-minor children on 16 July 2012, and applied for asylum. The Committee also notes the author's allegation that in Italy, she lived with her former husband and children in an apartment to which she had been referred after her initial stay in reception centres, but had difficulties paying the rent as the couple had no stable employment and received no social assistance. The author further submitted that she suffers from bipolar disorder, depression and cervical cancer, that her son, born in November 2011 (aged 5) suffers from a heart disease, and that she was compelled by her spouse to prostitute herself in order to be able to cater to the needs of the family.

9.5 The Committee observes that the Italian authorities acceded to the request by the Danish Immigration Service to accept the author and her children back in Italy, in accordance with the Dublin II Regulation, however due to the living conditions prevailing in Italy, the Danish Ministry of Justice decided on 13 May 2013 that the author's asylum application should be processed in Denmark for humanitarian reasons, in particular in light of the young age of the author's son, D.M. The author's asylum request was rejected on 12 March 2014, and this decision was confirmed by the Refugee Appeals Board on 14 August 2014.

9.6 The Committee notes the various reports submitted by the author highlighting the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin II Regulation. The Committee notes in particular the author's submission that returnees, such as herself, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy, are no longer entitled to accommodation in the government reception centres for asylum seekers.[25]

9.7 The Committee notes the finding of the Refugee Appeals Board that Italy should be considered the "first country of asylum" in the present case, and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic living conditions, although it is not required that such persons have the same social and living standards as nationals of the country (see para. 4.5 above). The Committee also notes the reference made by the State party to a decision of the European Court of Human Rights according to which, despite the situation in Italy having shortcomings, it had not been

[21] See para. 12.

[22] See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[23] See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

[24] See, inter alia, *Lin v. Australia*, and communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

[25] See Asylum Information Database, "Country report: Italy", January 2015, pp. 54 and 55, available from www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirdupdate_final_0.pdf.

shown to disclose "a systemic failure to provide support or facilities catering for asylum seekers".[26]

9.8 However, the Committee considers that the State party's conclusion did not adequately take into account the information provided by the author, based on her personal circumstances and past experience, that despite being granted residence in Italy, she faced intolerable living conditions there. In this connection, the Committee notes that the State party does not explain how, in case of return to Italy, the renewable residence permit would actually protect the author and her children, who include a minor child who suffers from a heart condition, from exceptional hardship and destitution, similar to that already experienced by the author in Italy.[27]

9.9 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported[28] and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author and her two children (both of whom were minors during the asylum proceedings) would face in Italy, rather than relying on general reports and on the assumption that, as the author had benefited from subsidiary protection in the past, she would, in principle, be entitled to the same level of subsidiary protection today. The Committee considers that the State party failed to take due consideration of the special vulnerability of the author and her children. Notwithstanding her formal entitlement to subsidiary protection in Italy, the author, who has been severely mistreated by her spouse, faced great poverty, and was not able to provide for herself and her children, including for their medical needs, in the absence of any assistance from the Italian authorities. The State party has also failed to seek effective assurances from the Italian authorities that the author and her two children, who are in a particularly vulnerable situation analogous to that encountered by the author in *Jasin and others v. Denmark* (which also involved the planned deportation of an unhealthy single mother with minor children, who had already experienced extreme hardship and destitution in Italy),[29] would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant. In particular, the State party failed to request Italy to undertake: (a) to renew the author's residence permit, and to issue permits to her children; and (b) to receive the author and her children in conditions appropriate to the children's age and the family's vulnerable status, which would enable them to remain in Italy.[30]

9.10 Consequently, the Committee considers that the removal of the author and her two children to Italy in these particular circumstances, and without the aforementioned assurances, would amount to a violation of article 7 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the author and her two children to Italy without proper assurances would violate their rights under article 7 of the Covenant.

11. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's claim, taking into account the State party's obligations under the Covenant, the Committee's present Views, and the need to obtain proper assurances from Italy, as set out in paragraph 9.9 above. The State party is also requested to refrain from expelling the author and her children to Italy while their request for asylum is being reconsidered.

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[26] See *Samsam Mohammad Hussein and others v. the Netherlands and Italy*, para. 78.

[27] See communications No. 2360/2014, *Jasin and others v. Denmark*, Views adopted on 22 July 2015, para. 8.8, and No. 2409/2014, *Abdilafir Abubakar Ali and others v. Denmark*, Views adopted on 29 March 2016, para. 7.7.

[28] See, for example, communications No. 1763/2008, *Pillai and others v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; and No. 2409/2014, *Abdilafir Abubakar Ali and others v. Denmark*, para. 7.8.

[29] See *Jasin and others v. Denmark*.

[30] See *Jasin and others v. Denmark*, para 8.9; *Abdilafir Abubakar Ali and others v. Denmark*, para. 7.8; and *Hussein Ahmed v. Denmark*, para. 13.8.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.